

FILED

FEB 22 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LAWRENCE C. AGEE,

Plaintiff - Appellant,

v.

CALIFORNIA MEDICAL BOARD,

Defendant - Appellee.

No. 04-17204

D.C. No. CV-03-00556-
PAN/MCE

MEMORANDUM^{*}

Appeal from the United States District Court
for the Eastern District of California
Morrison C. England, District Judge, Presiding

Submitted February 13, 2006^{**}

Before: FERNANDEZ, RYMER, and BYBEE, Circuit Judges.

Lawrence C. Agee appeals pro se from the district court's judgment dismissing on res judicata grounds his action alleging the California Medical Board violated his civil rights and the Americans with Disabilities Act in

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

suspending his medical license. We have jurisdiction under 28 U.S.C. § 1291.

We review de novo, *Clark v. Bear Stearns & Co., Inc.*, 966 F.2d 1318, 1320 (9th Cir. 1992), and we affirm.

The district court properly dismissed the instant action because it restates claims that were raised and dismissed in a prior action for failure to prosecute. *See Western Radio Servs. Co. v. Glickman*, 123 F.3d 1189, 1192 (9th Cir. 1997) (doctrine of res judicata serves to bar a claim where there is an identity of claims, a final judgment on the merits, and an identity of parties); *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 714 (9th Cir. 2001) (holding that dismissal of the prior action for failure to prosecute, because appellant failed to file an opposition to a motion to dismiss, was an adjudication on the merits under Rule 41(b)).

AFFIRMED